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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 DR. ELLIOT MCGUCKEN, an
12 individual,
13 Plaintiff,
14 v.
15 VALNET, INC., a Canadian Corporation,
16 individually, and doing business as
17 “TheTravel.com”; and DOES 1-10,
18 Defendants.
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Case No.:

PLAINTIFF’S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, Dr. Elliot McGucken (“McGucken”), by and through his undersigned
2 attorneys, hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
5 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
7 1338 (a)-(b).

8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
9 1400(a) in that this is the judicial district in which a substantial part of the acts and
10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Plaintiff McGucken is an individual residing in Los Angeles, California.
13 McGucken is a renowned nature and landscape photographer.

14 5. Plaintiff is informed and believes and thereon alleges that Defendant
15 Valnet, Inc., which does business as, and owns and operates the website,
16 <https://www.thetravel.com/>. Valnet, Inc. (“Valnet”), is a Canadian corporation that
17 conducts business in the state of California including within this District.

18 6. Defendants DOES 1 through 10, inclusive, are other parties who have
19 infringed McGucken’s copyright, have contributed to the infringement of
20 McGucken’s copyright, or have engaged in one or more of the wrongful practices
21 alleged herein. The true names, whether corporate, individual or otherwise, of
22 Defendants 1 through 10, inclusive, are presently unknown to McGucken, who
23 therefore sues said Defendants by such fictitious names, and will seek leave to amend
24 this Complaint to show their true names and capacities when same have been
25 ascertained.

26 7. McGucken is informed and believes and thereon alleges that at all times
27 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
28 manager, principal, alter-ego, and/or employee of the remaining Defendants and was

1 at all times acting within the scope of such agency, affiliation, alter-ego relationship
2 and/or employment; and actively participated in or subsequently ratified and adopted,
3 or both, each and all of the acts or conduct alleged, with full knowledge of all the
4 facts and circumstances, including, but not limited to, full knowledge of each and
5 every violation of Plaintiff's rights and the damages proximately caused thereby.

6 **CLAIMS RELATED TO MCGUCKEN'S PHOTOGRAPH**

7 8. McGucken is an acclaimed photographer who created and owns the
8 original photographs depicted in **Exhibit A** attached hereto ("Subject Photographs.")

9 9. McGucken has registered the Subject Photographs and was granted U.S.
10 copyright registrations as set forth in **Exhibit A** attached hereto.

11 10. Prior to the acts complained of herein, McGucken published and widely
12 publicly displayed and disseminated the Subject Photographs including without
13 limitation on McGucken's website at *www.mcgucken.com*.

14 11. Following McGucken's dissemination and display of the Subject
15 Photographs, Defendants, and each of them displayed, distributed, created derivative
16 works from, and/or otherwise exploited the Subject Photographs without license,
17 authorization, or consent, including by displaying the Subject Photographs in articles
18 on their website ("Infringing Uses"), which articles were created, published, and
19 distributed by Valnet. The Infringing Uses were made widely and publicly available
20 at *https://www.thetravel.com/*, which is owned and operated by Valnet. True and
21 correct screen captures of the Infringing Uses, and its accompanying URL, are
22 included in **Exhibit A** attached hereto.

23 12. At a minimum, Defendants', and each of their, display of the Subject
24 Photographs to the public on their commercial website violated McGucken's
25 exclusive display right under 17 U.S.C. § 106 *et seq.*

26 13. On information and belief, it is alleged that Valnet created the derivative
27 articles at issue and incorporated McGucken's photography and name into those
28 articles without his consent.

14. McGucken has not in any way authorized Defendants, or any of them, to copy, reproduce, display, distribute, create derivative works of, or otherwise use the Subject Photographs.

15. On January 3, 2023, McGucken, through his undersigned attorneys, served Defendants a letter demanding that Defendants cease and desist all infringing uses of McGucken's copyrighted work and reasonably resolve the action. The parties were unable to resolve the matter, necessitating this action.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against all Defendants, and Each)

16. McGucken repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

17. On information and belief, McGucken alleges that Defendants, and each of them, had access to the Subject Photographs, including, without limitation, through viewing the Subject Photographs on McGucken's website and social media accounts. Access is further evidenced by the Subject Photographs' exact reproductions in the Infringing Uses.

18. On information and belief, McGucken alleges that Defendants, and each of them, copied, reproduced, displayed, and/or distributed the Subject Photographs, including without limitation as seen in Infringing Uses attached hereto.

19. On information and belief, McGucken alleges that Defendants, and each of them, infringed McGucken's copyrights by creating infringing derivative works from the Subject Photographs and publishing same to the public.

20. Due to Defendants', and each of their, acts of infringement, McGucken has suffered general and special damages in an amount to be established at trial.

21. Due to Defendants', and each of their, acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of

1 McGucken's rights in the Subject Photographs. As such, McGucken is entitled to
 2 disgorgement of Defendants' profits directly and indirectly attributable to
 3 Defendants' infringement of McGucken's rights in the Subject Photographs in an
 4 amount to be established at trial.

5 22. On information and belief, McGucken alleges that Defendants, and each
 6 of them, have committed acts of copyright infringement, as alleged above, which
 7 were willful, intentional and malicious, which further subjects Defendants, and each
 8 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
 9 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
 10 asserting certain equitable and other defenses.

11 **SECOND CLAIM FOR RELIEF**

12 **(For Vicarious and/or Contributory Copyright Infringement – Against all** 13 **Defendants, and Each)**

14 23. McGucken repeats, re-alleges, and incorporates herein by reference as
 15 though fully set forth, the allegations contained in the preceding paragraphs of this
 16 Complaint.

17 24. On information and belief, McGucken alleges that Defendants knowingly
 18 induced, participated in, aided and abetted in and profited from the illegal
 19 reproduction and distribution of the Subject Photographs as alleged hereinabove.
 20 Such conduct included, without limitation, displaying photographs that Defendants
 21 knew, or should have known, were not authorized to be published by Defendants.

22 25. On information and belief, McGucken alleges that Defendants, and each
 23 of them, are vicariously liable for the infringement alleged herein because they had
 24 the right and ability to supervise the infringing conduct and because they had a direct
 25 financial interest in the infringing conduct. Specifically, Defendants, and each of
 26 them, profited in connection with the Infringing Uses, and were able to supervise the
 27 distribution, broadcast, and publication of the Infringing Uses.
 28

1 26. By reason of the Defendants', and each of their, acts of contributory and
2 vicarious infringement as alleged above, McGucken has suffered general and special
3 damages in an amount to be established at trial.

4 27. Due to Defendants' acts of copyright infringement as alleged herein,
5 Defendants, and each of them, have obtained direct and indirect profits they would
6 not otherwise have realized but for their infringement of McGucken's rights in the
7 Subject Photographs. As such, McGucken is entitled to disgorgement of Defendants'
8 profits directly and indirectly attributable to Defendants' infringement of
9 McGucken's rights in the Subject Photographs, in an amount to be established at
10 trial.

11 28. On information and belief, McGucken alleges that Defendants, and each
12 of them, have committed acts of copyright infringement, as alleged above, which
13 were willful, intentional and malicious, which further subjects Defendants, and each
14 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
15 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
16 asserting certain equitable and other defenses.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for judgment as follows:

19 **Against all Defendants, and Each with Respect to Each Claim for Relief:**

- 20 a. That Defendants, and each of them, as well as their employees, agents,
21 or anyone acting in concert with them, be enjoined from infringing
22 McGucken's copyrights in the Subject Photographs, including without
23 limitation an order requiring Defendants, and each of them, to remove
24 any content incorporating, in whole or in part, the Subject Photographs
25 from any print, web, or other publication owned, operated, or controlled
26 by any Defendant.
- 27 b. That McGucken be awarded all profits of Defendants, and each of them,
28 plus all losses of McGucken, plus any other monetary advantage gained

1 by the Defendants, and each of them, through their infringement, the
2 exact sum to be proven at the time of trial, and, to the extent available,
3 statutory damages as available under the 17 U.S.C. § 504 and other
4 applicable law.

- 5 c. That a constructive trust be entered over any revenues or other proceeds
6 realized by Defendants, and each of them, through their infringement of
7 McGucken's intellectual property rights;
8 d. That McGucken be awarded his attorneys' fees as available under the
9 Copyright Act U.S.C. § 505 et seq.;
10 e. That McGucken be awarded his costs and fees under the above statutes;
11 f. That McGucken be awarded statutory and enhanced damages under the
12 statutes set forth above;
13 g. That McGucken be awarded pre-judgment interest as allowed by law;
14 h. That McGucken be awarded the costs of this action; and
15 i. That McGucken be awarded such further legal and equitable relief as the
16 Court deems proper.

17 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
18 38 and the 7th Amendment to the United States Constitution.

19
20 Respectfully submitted,

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22 Dated: August 17, 2023

DONIGER / BURROUGHS

23
24 By: /s/ Scott Alan Burroughs
25 Scott Alan Burroughs, Esq.
26 Trevor W. Barrett, Esq.
27 Frank R. Trechsel, Esq.
28 *Attorneys for Plaintiff*